U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)

Issue Date: 27 February 2003

CASE NOS.: **2002-LHC-1751**
2002-LHC-1752

OWCP NOS.: **7-149131**
7-154128

IN THE MATTER OF

CHARLES R. NORWOOD, III,
Claimant

v.

AVONDALE INDUSTRIES, INC.,
Employer

APPEARANCES:

ARTHUR J. BREWSTER
On behalf of the Claimant

WAYNE G. ZERINGUE, JR.
On behalf of the Employer

Before: **LARRY W. PRICE**
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (herein the Act), 33 U.S.C. § 901, et seq., brought by Charles R. Norwood, III (Claimant) against Avondale Industries, Inc. (Employer).

The issues raised by the parties could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for hearing. A formal hearing was

held in Metairie, Louisiana, on October 16, 2002. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs. The following exhibits were received into evidence:

1. Joint Exhibit 1;
2. Claimant's Exhibits 1-5; and
3. Employer's Exhibits 1-12.

Based upon the stipulations of the parties, the evidence introduced, and the arguments presented, I find as follows:

I. STIPULATIONS

During the course of the hearing the parties stipulated and I find as related to Case No. 2002-LHC-01751 (JE-1):

1. Jurisdiction is not a contested issue. The claimant was employed by Avondale, a shipyard, and he was engaged in shipbuilding/repair at the time of his accident.

2. Date of injury/accident: June 19, 1998.

3. Injury in course and scope of employment: Admitted.

4. Employer/employee relationship at time of accident: Admitted.

5. Date Employer advised of injury: June 16, 1998.

6. Date Notices of Controversion filed: August 31, 1999, September 13, 1999 and November 17, 1999.

7. Date of informal conference: October 5, 1999 and February 21, 2002.

8. Permanent disability: 100% to left leg; undetermined as to right knee.

9. Date of maximum medical improvement: MMI reached on July 6, 1999, with regards to left knee; has not been reached with regard to right knee.

II. ISSUES

The unresolved issues in this proceeding are:

1. The type and frequency of psychiatric treatment needed therein and payment for past and future psychiatric treatment;

2. The amount of indemnity owed to Claimant and/or the amount of a credit due Employer pursuant to the previous Stipulation and Order.

3. Attorney's fees and interest.

III. STATEMENT OF THE CASE

Case Summary

Claimant was previously before this Court in November 2000 seeking compensation benefits for two separate injuries which occurred within the course and scope of his employment with Employer. During that hearing, the Parties reached an agreement, and the Court issued a Stipulation & Order. Claimant now seeks the Court's approval for a course of treatment recommended by his treating psychiatrist for depression, anxiety and panic attacks related to his physical injuries. Employer has refused to authorize the course of treatment, arguing that it is neither reasonable nor necessary according to Section 7 of the Act. In addition, Employer seeks a credit against future compensation for a previous overpayment of benefits.

Claimant's Testimony

Claimant is married and has four children. He has previously been evaluated by Dr. John MacGregor, a psychiatrist, as well as Dr. Kevin Bianchini, a neuropsychologist. Claimant also was examined by Dr. Scuddy Fontenelle at the Department of Labor's request. After his previous administrative hearing, Claimant began seeing Dr. MacGregor on a regular basis. (Tr. 8). Claimant was suffering from stress-related panic attacks. He has trouble sleeping and worries about the future and his ability to take care of his family. Due to Claimant's current physical condition, he is unable to play with his kids. (Tr. 9). He is unable to walk without the use of Canadian-style crutches, and he wears braces on both legs. (Tr. 9-10). Claimant also wears a device in his spinal cord to help control his pain. (Tr. 18). Claimant estimated that he probably gets about three hours of sleep a night because he has trouble getting comfortable. He has popped his knee out during the night on more than one

occasion. The night before the hearing, Claimant got no sleep because he had fallen and shattered his tooth. (Tr. 16).

Claimant also sees orthopedic specialists and a pain management specialist, who has prescribed Lortab and Soma for him. (Tr. 10-11, 15). The doctors have discussed the possibility of amputating Claimant's leg, but he wants to wait and see if a quadricep transplant surgery could be done instead. (Tr. 11). Claimant's treating orthopedist for his right leg is Dr. Bourgeois, but he has not seen Dr. Bourgeois for several months. (Tr. 22, 29). Claimant testified that Dr. Bourgeois was "upset" that Employer would not approve an arthroscopic procedure on Claimant's knee. (Tr. 27). Although the surgery was later approved, Claimant never had the procedure done because he also needed approval for a porch to be built onto his trailer house, since he would be wheelchair-bound after the surgery. (Tr. 27-28, 29). The porch was never built because Claimant's trailer burned down and he had to move to a rental house. (Tr. 28, 29).

After the first hearing, Claimant was authorized to see Dr. MacGregor for three months. (Tr. 22-23). After that period, Employer authorized another three months of psychiatric treatment. Claimant acknowledged that he missed three appointments during that period of time. He explained that he called to cancel one visit because his daughter was ill. (Tr. 23). He missed another appointment because he suffered a drug overdose that required him to go to the emergency room. (Tr. 24). The drug overdose was the result of an adverse reaction to some prescription tranquilizers. (Tr. 23, 29). In addition, Claimant missed a third appointment when he fell down the steps of his house and had an accident. (Tr. 24-25). Claimant also had car problems for about two weeks. (Tr. 25).

Claimant has discussed his concerns about losing his leg with Dr. MacGregor. (Tr. 11). Dr. MacGregor has diagnosed Claimant with depression and anxiety attacks and has prescribed Paxil to help with the panic attacks. Claimant testified that Employer pays for the Paxil prescription but does not pay for him to see Dr. MacGregor. (Tr. 12). Claimant would like to continue seeing Dr. MacGregor, who is teaching him how to cope with the aftermath of his injuries. (Tr. 12-13, 18). He testified that Dr. MacGregor's treatment was helping him learn how to deal with his situation. (Tr. 18). On cross-examination, Claimant testified that he did not talk about his childhood with Dr. MacGregor and that there was nothing wrong in his childhood. He acknowledged discussing his former involvement in gang activity with Dr. MacGregor and said he had told the doctor that he had learned from his past mistakes and was now "on the right track." Claimant talked to Dr. MacGregor about his experiences with drug rehabilitation and about his excessive absences in high school. (Tr. 20).

Claimant recently saw Dr. Bianchini. (Tr. 13). He acknowledged that he was scheduled to see Dr. Bianchini in the past but had missed a few appointments. (Tr. 13, 25). Claimant explained that he missed one appointment because he was in the hospital with a leg

infection, and he missed another appointment because his car broke down on the interstate. He testified that he or his wife called Dr. Bianchini to cancel that day. (Tr. 13). Claimant also missed an appointment when he was in the hospital following the accidental drug overdose. (Tr. 25, 30). Claimant has never refused to see Dr. Bianchini, and he underwent a full evaluation on his last appointment. (Tr. 14). In early October 2002, Claimant underwent an eight hour test administered by Dr. Bianchini. (Tr. 26). Before the last hearing, Claimant also saw Dr. Richard Roniger at Employer's behest. (Tr. 14).

Claimant's only source of income is the $700 per week that he receives in compensation benefits. Other than this income, his wife receives some child support payments from their son's biological father, but these payments are infrequent. (Tr. 21). Claimant has not officially adopted the boy because he does not want him to lose his child support benefits. (Tr. 22).

Claimant acknowledged that he received a $10,000 advance from Employer against future compensation owed to him. (Tr. 18-19). He requested the money for expenses including a new car, a new place to live and the birth of his twin daughters. He understood that Employer was not required to pay this advance, which was given to Claimant voluntarily. (Tr. 19).

Depositions of John R. MacGregor, M.D.

October 10, 2000 Deposition

Dr. MacGregor is a practicing psychiatrist who has treated and evaluated Claimant, beginning in July 2000. (CX. 1, pp. 5-6, 7). When Dr. MacGregor first saw Claimant, Claimant related that he had suffered two work-related injuries, one to his left leg in June 1998 and another to his right knee in June 1999. (CX. 1, p. 6). Claimant told Dr. MacGregor he had been unable to work since that time, and several doctors had recommended amputation of his left leg, in addition to recommending an arthroscopic procedure on his right leg. (CX. 1, pp. 6, 18). Claimant complained of psychological symptoms including depression, irritability, frustration and anger. (CX. 1, p. 6). Claimant also told Dr. MacGregor that Claimant was afraid that he might hurt his children or someone else, and he was having trouble sleeping at night. (CX. 1, pp. 6-7). He had gained a considerable amount of weight and felt hopeless about his situation, even to the point of having serious suicidal thoughts. (CX. 1, p. 7). In addition, Claimant had no energy and was worried about his future. He had feelings of guilt and was very critical of himself. Claimant had trouble concentrating and had lost interest in the things he used to enjoy. (CX. 1, p. 8). He was withdrawn and isolated from his friends. Claimant's only prior experience with psychiatric care occurred when Claimant's stepfather sent him to a psychiatric hospital after he was caught with marijuana when he was a teenager. (CX. 1, p. 9).

Dr. MacGregor found Claimant to be an open person. (CX. 1, p. 26). When Dr. MacGregor conducted a mental status examination of Claimant, he found that Claimant was "too ingratiating" and "too personal," preferring to ask Dr. MacGregor questions rather than answering them. (CX. 1, pp. 10, 27, 36, 41, 57). Dr. MacGregor explained that he believed this was a defensive maneuver and a sign of Claimant's anxiety. (CX. 1, pp. 10, 27, 36, 41). Dr. MacGregor disagreed with the suggestion that Claimant was "in relatively good spirits" during their appointments. (CX. 1, pp. 41-42). On an intellectual level, Claimant seemed borderline average and "not particularly bright." He showed no signs of brain damage. Dr. MacGregor found that Claimant opened up more in their second and third interviews. He showed legitimate signs of depression, agitation and anxiety. (CX. 1, p. 11). Claimant showed no signs of psychosis and seemed to be in control of his impulses, although Dr. MacGregor was concerned about the possibility of Claimant losing control and hurting himself or others. (CX. 1, p. 12).

After seeing Claimant on three occasions, Dr. MacGregor diagnosed Claimant with severe dysthymic disorder, another name for severe depression. (CX. 1, p. 12). In his opinion, Claimant had been suffering from depression for at least two years, and the depression was a direct result of Claimant's work-related injuries. (CX. 1, pp. 13, 18, 43-44). Dr. MacGregor affirmed that he was provided with Dr. Bianchini's reports and Dr. Roniger's reports, and the history given to him was similar to that given to the other doctors. (CX. 1, pp. 9-10, 51-52). When asked how his diagnosis differed from Dr. Roniger's diagnosis of pain disorder and Dr. Bianchini's diagnosis of depression not otherwise specified, Dr. MacGregor testified that he did not think it really made a difference which diagnosis was used because regardless, Claimant was suffering from severe depression. (CX. 1, pp. 13-14, 43). When asked about Dr. Bianchini's diagnosis of personality disorder not otherwise specified with antisocial features, Dr. MacGregor testified that he found no evidence of personality disorder when he examined Claimant. (CX. 1, p. 14). In Dr. MacGregor's opinion, Claimant had been a troubled teenager but did not exhibit antisocial personality traits now. (CX. 1, pp. 14-15). Dr. MacGregor could not say for sure whether Claimant's depression could have been a pre-existing condition that stemmed from his personal history of a troubled childhood and destructive high school behavior, but he noted that Claimant seemed to have resolved his issues and put his past behind him. (CX. 1, p. 44). He agreed that it would be possible for these kind of issues to cause depression but believed that Claimant had overcome those problems. (CX. 1, pp. 44-45).

On cross-examination, Dr. MacGregor acknowledged that he had not included his observations about Claimant's jovial demeanor in his reports. (CX. 1, pp. 27, 57). He testified that he did not include the comments about Claimant's behavior being a defense mechanism because he did not think it was necessary to do so and it was easier to describe Claimant's demeanor in person than to write it in the report. (CX. 1, p. 28). Dr. MacGregor also acknowledged that there was no mention of Claimant's demeanor in his letters to

Claimant's attorney or to Debbie Hebert, Employer's claims adjuster. He testified that he mentioned it to Claimant's attorney during a phone conversation, and he denied mentioning it only after reading Dr. Bianchini's report. (CX. 1, p. 54). Dr. MacGregor stated that he formed his opinions independently, without relying on the reports of Dr. Bianchini or Dr. Roniger. (CX. 1, pp. 55-56).

Dr. MacGregor thought that he and Claimant had discussed Claimant's childhood on all three visits and that Claimant had revealed that his childhood had been troubled. Dr. MacGregor stated that Claimant had told him that his father was an alcoholic who frequently beat him until Claimant fought back and put his father in the hospital. (CX. 1, p. 29). Dr. MacGregor was unsure whether he had that information in his notes, but he knew that it was not included in his report. He explained that he no longer had the notes of Claimant's evaluations because he destroys his notes after he makes his reports. (CX. 1, p. 30). Dr. MacGregor acknowledged that Dr. Bianchini's report, which he had reviewed the day before his deposition, contained this information, but said Claimant had told him the same things. (CX. 1, pp. 30-31). Dr. MacGregor pointed out that his report listed more symptoms than Dr. Bianchini's report did, although Dr. Roniger included the same symptoms listed by Dr. MacGregor. (CX. 1, p. 52). He agreed that a psychiatrist should know as much of a patient's personal history as possible in order to form an opinion of the patient's psychiatric condition.

Dr. MacGregor related that Claimant had told him that in high school he was involved in a gang and used and possibly sold drugs. (CX. 1, p. 32). Claimant was very involved in sports and was passed through school even though he did not do much work. Dr. MacGregor agreed that this information was not contained in his report, and he acknowledged that this information was the same as the information contained in Dr. Bianchini's report. (CX. 1, p. 33). When asked whether he took Claimant's troubled high school years into account in his treatment recommendations, Dr. MacGregor replied that it was taken into consideration, but the actual course of treatment was not directed at any of Claimant's high school behavior. (CX. 1, p. 34). Dr. MacGregor testified that he would not have wanted to work with Claimant if he was still exhibiting these antisocial traits, and he noted that he had related this concern to Claimant's attorney. (CX. 1, pp. 34-35, 52-53). He stated that he did not include this concern in his reports because it was "a negative finding" at that point. Dr. MacGregor found that Claimant acted normally during his evaluations. (CX. 1, p. 35). He did not find Claimant's jovial demeanor to be inappropriate. (CX. 1, p. 36).

According to Dr. MacGregor, Claimant needed intensive psychiatric treatment, a combination of intensive psychotherapy three times a week and psychotropic medication. For medication, Dr. MacGregor would prescribe antidepressants and possibly minor tranquilizers as well but would exercise caution in prescribing medications due to Claimant's past drug history. (CX. 1, p. 15). He would probably start Claimant on Prozac or Zoloft and

see whether his symptoms improved. (CX. 1, p. 16). Dr. MacGregor explained that the purpose of the intensive psychotherapy would be to talk about Claimant's emotions and try to help him learn some coping mechanisms, in addition to providing support for Claimant. (CX. 1, pp. 17, 37).

Dr. MacGregor noted that talking about problems in psychotherapy also helps diffuse anger and frustration for patients, thereby toning down the symptoms of depression. He testified that this sort of therapy should be scheduled on a frequent basis "for it to really get anywhere." (CX. 1, p. 17). Elaborating on his opinion, Dr. MacGregor stated that Claimant needed to be seen on a frequent basis in order to do as much work as possible to get control of himself and his symptoms. (CX. 1, pp. 20, 37). Dr. MacGregor affirmed that it is not unusual for psychiatrists to have different opinions on the course of treatment. (CX. 1, p. 22). He emphasized his belief that medication is not a cure-all for psychiatric disorders and that psychotherapy is an important part of treatment. (CX. 1, pp. 22-23).

Dr. MacGregor testified that with proper psychiatric care, Claimant's symptoms could be controlled, but as long as Claimant remained in his disabled state, depression would continue to be a problem for him. (CX. 1, pp. 18-19). Dr. MacGregor predicted that Claimant would need long-term psychiatric treatment because his depression could not be cured unless his physical problems could be cured. (CX. 1, p. 19). He testified that Claimant's current psychiatric condition would restrict him from returning to work, specifically because of his "volatile temper" and feelings of frustration. (CX. 1, pp. 21, 47). Eventually, however, returning to work could help Claimant by restoring his feelings of self-esteem and pride. (CX. 1, pp. 21-22, 47-48). Dr. MacGregor believed he could help Claimant from a psychiatric standpoint. (CX. 1, p. 53).

Dr. MacGregor affirmed that Employer paid the bill for Claimant's three sessions with him in July 2000. (CX. 1, p. 23). Each session typically lasts forty-five minutes, and he charges $166 per session, which is the fee set by the state for injured workers. (CX. 1, p. 50). Dr. MacGregor testified that each visit with Claimant lasted for forty-five to fifty-five minutes. (CX. 1, p. 26). Dr. MacGregor stated that it was possible that the Claimant's visits could decline from three times a week to one time a week or even less frequently if Claimant began showing improvement and his condition remained stable. Dr. MacGregor would exercise caution in reducing the frequency of Claimant's psychotherapy sessions. (CX. 1, p. 24). He speculated that Claimant would probably need to undergo treatment for "a number of years," due to the severity of the physical injuries causing his depression. (CX. 1, pp. 25, 51). He agreed that if Claimant's physical condition improved, his psychological condition would probably also improve. (CX. 1, pp. 25, 46-47, 53).

When asked about the possibility that Claimant might have his leg amputated, Dr. MacGregor testified that it was Claimant's decision but that he would try to help Claimant

"be in the best frame of mind to make that decision from an emotional standpoint." (CX. 1, p. 39). Dr. MacGregor did not have an opinion on whether amputation and a prosthetic limb would improve Claimant's psychiatric condition. (CX. 1, pp. 39-40). Dr. MacGregor stated that although there is such a thing as psychiatric MMI, Claimant was not at psychiatric MMI and might never reach it. (CX. 1, p. 38).

Dr. MacGregor agreed that people who have suffered injuries similar to Claimant's do not necessarily suffer from depression. He has treated people who have overcome depression but noted that people with physical injuries tend to suffer from symptoms of depression as long as they are injured. (CX. 1, p. 45).

September 30, 2002 Deposition

Dr. MacGregor testified that he first saw Claimant on July 5, 2000, and last saw him on December 12, 2001. (CX. 2, p. 4). In January and February 2001, Claimant was complaining of numerous symptoms, including depression, anger, frustration, insomnia, lack of energy, social isolation, low self-esteem. (CX. 2, pp. 5-6). Dr. MacGregor's diagnosis of depression and anxiety remained the same, and Claimant's recommended course of treatment included psychotropic medication and psychotherapy. Dr. MacGregor had not yet determined which medications to prescribe to Claimant. (CX. 2, p. 6). In March 2001, he prescribed Prozac for Claimant's depression and anxiety. (CX. 2, pp. 6-7).

Dr. MacGregor continued to see Claimant throughout 2001, with some gaps in treatment. (CX. 2, p. 7). Claimant missed appointments for various reasons, including pain, oversleeping and car trouble. On March 28, 2001, worker's comp stopped authorizing Claimant's treatment. (CX. 2, p. 8). Claimant's condition remained severe and now included panic attacks, so Dr. MacGregor switched his medication to Paxil. (CX. 2, pp. 8-9). Apparently Employer then authorized treatment through at least May 30, 2001, because Dr. MacGregor continued to treat Claimant twice a month during May. (CX. 2, p. 9). Dr. MacGregor testified that Claimant's condition worsened in May due to Claimant's worries that his legs would be amputated. (CX. 2, pp. 9-10). In addition, Claimant told Dr. MacGregor that he had been suffering from seizures. Claimant's neurologist told Dr. MacGregor that these were actually pseudo seizures, meaning that Claimant could continue to take antidepressant medication, which is not allowed for people who have real seizures. (CX. 2, p. 10).

On May 15, Dr. MacGregor noted that Claimant was afraid he would lose control of his anger and hurt someone. Claimant reported that he had punched a tree to relieve his anger. Claimant also told Dr. MacGregor that he did not know what kind of jobs he could do, now that he was unable to do manual labor. (CX. 2, p. 11). Dr. MacGregor reiterated his earlier testimony that returning to work would be beneficial for Claimant but that he

needed to get his emotions under control before he could return to a work environment. (CX. 2, pp. 11-12).

Dr. MacGregor saw Claimant on June 6 and June 13, 2001. (CX. 2, p. 12). These visits were also authorized by Employer. Claimant continued to have the same complaints, and Dr. MacGregor's reports indicated that Claimant was having suicidal thoughts as well as continued feelings of rage. (CX. 2, p. 13). Claimant had punched his neighbor's windshield and broken it. (CX. 2, pp. 11, 13). Because of Dr. MacGregor's concerns about Claimant's mental state, Claimant's attorney agreed to pay for three additional visits. (CX. 2, pp. 13-14). Claimant's attorney subsequently paid the $567 bill for these visits, and Claimant does not have an outstanding balance with Dr. MacGregor at this time. (CX. 2, pp. 19-20).

On October 25, 2001, Dr. MacGregor wrote a letter to Claimant's attorney reporting that Claimant's psychiatric condition had gotten much worse, and at that time he believed "It was vital . . . that [Claimant] resume psychiatric treatment at least two to three times per week." (CX. 2, pp. 14-15). Dr. MacGregor explained that these sessions would benefit Claimant by helping him to deal with his depression, anxiety and panic attacks as well as his destructive urges towards himself and others. According to Dr. MacGregor, talking about these problems often helps patients to have better control over their emotions. Claimant was continuing to take Paxil during this time.

Dr. MacGregor testified that over the course of 2001, Claimant's psychiatric condition deteriorated. (CX. 2, p. 15). He believed that this deterioration was the result of the fact that Claimant was not undergoing regular psychiatric treatment as Dr. MacGregor had recommended, as well as the fact that Claimant was getting frustrated with his condition. (CX. 2, pp. 15-16). Dr. MacGregor's last visit with Claimant was on December 12, 2001. He refilled Claimant's Paxil prescription at that time. (CX. 2, p. 16). Dr. MacGregor's notes indicated that Claimant's panic attacks had decreased, possibly because of the medication. (CX. 2, pp. 16-17).

Dr. MacGregor testified that he still believes that Claimant's depression and anxiety are caused by his work-related injuries. He continues to recommend that Claimant take medication and undergo psychotherapy two to three times a week. (CX. 2, p. 17). Dr. MacGregor affirmed that in his opinion, it would be normal psychiatric practice to treat a patient like Claimant in this manner. (CX. 2, p. 19). Dr. MacGregor expressed concern for Claimant's long-term psychiatric improvement. According to Dr. MacGregor, as long as Claimant continues to be seriously injured and essentially unemployable, he will remain depressed and anxious. Dr. MacGregor reiterated his earlier testimony that if Claimant can be vocationally rehabilitated, his psychiatric condition could improve, but on the other hand, if vocational rehabilitation does not help Claimant, his depression could get worse. (CX. 2,

p. 18). It is possible that Claimant might require psychiatric treatment for the rest of his life. In any case, Dr. MacGregor stated that it would be "highly unlikely" that two to three months of intensive psychotherapy would resolve Claimant's psychiatric condition. (CX. 2, p. 21).

In a best case scenario, Dr. MacGregor speculated that if Claimant was physically rehabilitated tomorrow, his depression would be relieved, but he believed it was more likely that Claimant would continue to suffer mentally due to his physical injuries. (CX. 2, pp. 21-22). He testified that Claimant was psychiatrically disabled when Dr. MacGregor last saw him. He did not know when Claimant might be able to return to gainful employment. (CX. 2, p. 22). During their last appointment, Claimant was still having serious suicidal and homicidal thoughts, was having difficulty concentrating and was taking psychotropic medication. For those reasons, Dr. MacGregor felt it could be hazardous for Claimant to be in a work environment. (CX. 2, p. 23). He explained that it was more likely that Claimant could become provoked at work than in his home environment. (CX. 2, p. 24).

Dr. MacGregor acknowledged that he filed a complaint against Dr. Bianchini in the fall of 2001. He explained that he did so because he learned that it was against the law for a Ph.D psychologist to review the work of an M.D. psychiatrist. He notified the Louisiana State Board of Medical Examiners and was told they would investigate the matter. (CX. 2, p. 19). Dr. MacGregor testified that he did not know the outcome of his complaint and had not followed up with it. (CX. 2, pp. 20-21). Dr. MacGregor acknowledged that in October 2001, he almost filed a state worker's compensation form seeking authorization for Claimant's treatment, but he then deferred to Claimant's attorney on the matter. (CX. 2, pp. 24-25). Dr. MacGregor testified that he wanted to file the form because Claimant needed treatment and he wanted to help him get it. (CX. 2, p. 25). Dr. MacGregor stated that he considered reducing the fee that he charged Claimant but decided it was not appropriate in his case. He has never treated Claimant for free.

Dr. MacGregor testified that Claimant has not yet reached MMI from a psychiatric standpoint. (CX. 2, p. 26).

Deposition of Richard Roniger, M.D.

Dr. Roniger is a psychiatrist who evaluated Claimant on August 25, 2000, at the request of Employer. (EX. 10, pp. 5-6). In connection with his evaluation of Claimant, Dr. Roniger also reviewed the medical records of Dr. Bianchini, Dr. MacGregor, Dr. Montz, Dr. McHale, Dr. Bourgeois and Dr. Katz, along with Claimant's employment records. (EX. 10, pp. 7-8).

Dr. Roniger explained that when he evaluates a patient, he introduces himself and tells the patient that the purpose of the evaluation is for him to ask questions and send a report to

the party who requested the evaluation. Then he takes a history and conducts an examination. (EX. 10, p. 8). The history includes both the history of the injury or illness as well as family history, medical history, substance abuse history, and so forth. (EX. 10, p. 9). The mental status exam consists of questions and observations about the patient's appearance, behavior, speech, mood, thinking and affect. (EX. 10, pp. 8-9). Dr. Roniger asks about suicidal or homicidal thoughts and tests for organicity. If the evaluation is not complete in one hour, he asks the patient to return, but in Claimant's case this was not necessary. (EX. 10, p. 10).

During the history, Claimant told Dr. Roniger that he had never seen a mental health professional before and did not know whether anyone in his family had undergone mental health care. He had a history of headaches and seizure-like activity. Claimant did not use alcohol and denied having problems with alcohol in the past. He reported that he used drugs in the past but had not done so since the age of eighteen. (EX. 10, p. 16). Claimant currently used very little caffeine. (EX. 10, p. 17). Dr. Roniger testified that he did not know how Claimant had stopped using drugs other than the fact that Claimant said he decided to stop using after three friends overdosed on drugs. (EX. 10, pp. 18-19). He agreed it was possible that Claimant could have been scared enough to stop taking drugs after those experiences. (EX. 10, p. 43). Dr. Roniger was aware that Claimant had been in drug treatment when he was fifteen and did not stop using drugs until he was eighteen. (EX. 10, p. 20). He acknowledged that Claimant's medical records contained no indications that Claimant had any substance abuse problems after the age of eighteen. (EX. 10, pp. 35-36). He agreed that Claimant appeared to have been honest with him and with his other doctors in revealing his prior substance abuse problems. (EX. 10, pp. 41-42).

Claimant had been arrested before, and he had gone to jail for things like fighting, gang banging and breaking curfew. (EX. 10, p. 22). In referring to his past, Claimant told Dr. Roniger, "Leave it behind and don't worry about my past. I forgave and forgot." (EX. 10, p. 21). Based on what Claimant related in regards to his childhood, family history and high school years, Dr. Roniger surmised that Claimant "had an early life of turmoil." (EX. 10, pp. 21-23).

In Dr. Roniger's opinion, Claimant's personal history indicated antisocial behavior, and he agreed with Dr. Bianchini's diagnosis of personality disorder, not otherwise specified, with antisocial features. (EX. 10, pp. 23-24). Dr. Roniger explained that antisocial behavior is behavior outside of the rules of society. (EX. 10, pp. 23, 36). He testified that antisocial behavior can be treatable, but it is difficult. He stated that antisocial behavior normally would not be confused with depression unless the antisocial behavior involved drug abuse, which can be confused with a depressive disorder. (EX. 10, p. 24). Dr. Roniger testified that he did not include this diagnosis in his report because he thought that Claimant's antisocial history was clear. He agreed that according to the history, Claimant's antisocial

behavior occurred only in his teenage years. (EX. 10, pp. 36-37). Dr. Roniger acknowledged that when he evaluated Claimant, there were no indications that Claimant's past antisocial behavior contributed to or had an effect on his present depression and anxiety. (EX. 10, p. 37).

During Claimant's evaluation, he told Dr. Roniger how his two work-related accidents had occurred and related that he had not returned to work since his second accident in June 1999. (EX. 10, pp. 10-11). Claimant told Dr. Roniger that he was seeing Dr. Bourgeois every six to eight weeks and had also seen a psychiatrist four times, though Claimant said he could not remember the psychiatrist's name. (EX. 10, pp. 11-12). Claimant complained of irritability, depression, worry, insomnia, frustration, anger and difficulty having sex. He told Dr. Roniger that his pain and mood had worsened since his June 1999 accident and that medication helped his pain but not his mood. (EX. 10, p. 12). Claimant reported that his daily activities consisted of driving and doing some household chores. Claimant did not see friends very often and had no hobbies. (EX. 10, p. 22).

Dr. Roniger testified that during the mental status exam, Claimant was cooperative, coherent, articulate and friendly. He exhibited a sense of humor. He told Dr. Roniger that he was bored and "tired of being like this." He reported that he had gained a lot of weight and had no energy and no pleasure in his life. Claimant related that amputation and surgery had been recommended by Dr. Bourgeois, and he explained that he had lower back pain because his legs were not working correctly. (EX. 10, p. 25). Claimant exhibited no signs of psychosis or distorted thinking but stated that he sometimes thinks of suicide, although he could not do that to his kids. (EX. 10, pp. 25-26). Claimant reported that his fiancee (now wife) was supportive of him. There was no indication that he had impaired concentration or memory. Claimant said he does not look to the future anymore. He said he would love to go back to work or go to school and learn a new trade. He was afraid that he would have trouble getting hired. Claimant also said he was tired of being belittled by other people and that he is not the same person anymore. (EX. 10, p. 26).

Dr. Roniger testified that Claimant did not manifest any signs of depression during their appointment. (EX. 10, p. 27). He agreed that joking around and exhibiting a sense of humor are not characteristics consistent with depression but later acknowledged that it is possible for someone suffering from depression to have a sense of humor. Dr. Roniger noted that weight gain can be associated with depression. (EX. 10, pp. 27, 40).

After meeting with Claimant and reviewing his medical records, Dr. Roniger diagnosed Claimant with pain disorder, associated with psychological factors and a general medical condition. (EX. 10, pp. 27-28). He explained that the general medical condition in this case is Claimant's leg and back problems, and the psychological factors refer to mild to moderate depression. Dr. Roniger acknowledged that Claimant had pre-existing

psychological factors due to the turmoil he experienced while growing up. (EX. 10, p. 28). He conceded, however, that other than this, there were no other signs of pre-existing depression prior to Claimant's work-related accidents. (EX. 10, p. 43). Dr. Roniger testified that Tylenol No. 4, one of Claimant's medications, could induce a sense of depression and cause impaired concentration and a general state of apathy, but he did not know how long Claimant had been taking this medication. (EX. 10, p. 15). He agreed that it would be helpful to modify Claimant's medication to see if it was the source of his depression. (EX. 10, pp. 15-16, 28-29, 32-34).

Dr. Roniger explained the mild to moderate depression diagnosis reflects his opinion that Claimant is not greatly disturbed and his psychological problems are not severe enough to cause him great difficulty in his life. (EX. 10, p. 30). Dr. Roniger did not believe that Claimant's depression would prevent him from gainful employment. He suggested brief supportive psychotherapy for Claimant, consisting of meeting on a weekly basis for eight to twelve weeks and making decisions about "what to do next." Each session would last between fifteen and forty-five minutes, depending on Claimant's level of interest. (EX. 10, p. 31). Dr. Roniger also mentioned the possibility of antidepressive medication such as Zoloft, Paxil, Prozac or Celexa. He testified that medication should help Claimant, rather than limit his ability to be gainfully employed. Antidepressive medication would not affect Claimant's ability to drive or make him drowsy. (EX. 10, p. 32). Dr. Roniger also suggested that Claimant could take nonsteroidal anti-inflammatory medication for pain, as opposed to narcotic painkillers. (EX. 10, pp. 33-34).

When asked about the significance of the fact that Claimant could not remember the name of his treating psychiatrist, Dr. Roniger testified that in his opinion, Claimant's problems are primarily physical and that his psychological issues are less significant than his physical issues. Dr. Roniger did not interpret Claimant's forgetfulness as evidence of manipulation or secondary gain, and he did not think Claimant was exaggerating his symptoms. (EX. 10, pp. 13, 41). He agreed that Dr. Bianchini's reports also stated that Claimant did not appear to be malingering or exaggerating his symptoms. (EX. 10, p. 41). Dr. Roniger also agreed with Dr. Fontenelle's report, which suggested, but did not necessarily recommend, mental health counseling. (EX. 10, pp. 45-46). Dr. Roniger disagreed with Dr. MacGregor's diagnosis that Claimant needed therapy several times a week for at least sixteen weeks. Dr. Roniger explained that he thought intensive psychotherapy was not reasonable and necessary because it involves exploring personal and family dynamics and trying to better understand oneself, and in his opinion, Claimant does not want or need that kind of therapy, nor would it help him. (EX. 10, pp. 34-35, 46-47). He acknowledged, however, that it is not uncommon for doctors to disagree on the course of treatment for a patient. (EX. 10, p. 44). Dr. Roniger believed that Claimant was not at MMI from a psychiatric standpoint. (EX. 10, p. 35).

Dr. Roniger agreed that the prospect of amputation of a leg could be cause for depression. (EX. 10, p. 38). He acknowledged that Claimant's loss of wage-earning capacity due to his physical injuries also could cause him to be depressed. (EX. 10, pp. 38-39). He testified that as long as Claimant has physical symptoms, his pain disorder may persist, but he noted that the mild depression, or dysphoria, may disappear as Claimant adjusts to his situation. (EX. 10, p. 39).

Dr. Roniger did not know why Claimant told him that he had been taking No-Doz on the day of his first accident in June 1998. He noted, however, that Claimant had gotten into trouble with addictive substances in the past, and he believed that Claimant should avoid taking any addictive medication. (EX. 10, p. 14). Dr. Roniger stated that substance use or abuse were concerns that should be addressed in Claimant's long-term care. (EX. 10, pp. 20-21; 42). When told that Claimant had been working two jobs at once when he was taking the No-Doz, Dr. Roniger commented that many people who work two jobs do so without benefit of caffeine or other chemicals. (EX. 10, pp. 42-43).

Deposition of Kevin J. Bianchini, Ph.D

Dr. Bianchini specializes in clinical psychology and neuropsychology and has an expertise in the area of psychological factors and pain. (EX. 12, pp. 6, 72). At Employer's request, he has evaluated Claimant on two occasions, in July 2000 and October 2002. (EX. 12, pp. 7-8). On both occasions, Dr. Bianchini conducted psychological pain evaluations on Claimant. (EX. 12, p. 8). This type of evaluation consists of examining psychological factors and how they play a role in a person's report of physical pain, adjustment to physical problems and psychological reaction to physical problems. (EX. 12, p. 9). Dr. Bianchini explained that psychologists, such as himself, typically rely more on psychological testing than psychiatrists, who rely more on interviews and medical records. (EX. 12, pp. 9-11). In addition, psychologists do not prescribe medications, though they may sometimes recommend medications. (EX. 12, pp. 9-11, 71). Dr. Bianchini testified that he takes into account the patient's personal history when conducting a psychological evaluation. He explained that past history can predict future behavior, and in addition, knowing someone's past history helps determine the causality of his or her current symptoms. (EX. 12, p. 12).

On his most recent evaluation with Dr. Bianchini, Claimant complained of trouble sleeping, depression, constant knee and leg pain, constant lower back pain and panic attacks. (EX. 12, p. 13). In Dr. Bianchini's opinion, Claimant was suffering from depression related to "adjustment difficulties," meaning that Claimant's physical problems had not permanently resolved. (EX. 12, pp. 14-15). Dr. Bianchini explained that Claimant's depression stemmed from a lack of resolution with regard to his physical condition and would probably improve once he knew what his permanent physical limitations would be and what type of work he

would be able to do. (EX. 12, pp. 15-16, 21-22). He agreed that Claimant's depression was causally related to his injuries. (EX. 12, pp. 65-66).

Dr. Bianchini's specific diagnosis was depressive disorder not otherwise specified, which is a general depression diagnosis, and personality disorder, not otherwise specified, with antisocial features. (EX. 12, pp. 16-17, 65). As he explained, the depressive disorder is the person's symptoms, and the personality disorder refers to longstanding patterns of behavior. (EX. 12, p. 17). In Claimant's particular case, Dr. Bianchini cited Claimant's involvement with criminal activities, such as gang involvement and prior drug use, as evidence of antisocial behavior. (EX. 12, pp. 17-18). Dr. Bianchini concluded that Claimant's personality disorder was not causally related to his workplace injuries and instead was a pre-existing condition related to Claimant's childhood experiences and family problems. (EX. 12, pp. 18-20, 26).

Dr. Bianchini testified that Claimant did not mention his fear that his left leg might be amputated. (EX. 12, p. 23). He noted that it is not unusual for people who have amputations to undergo an adjustment disorder during which they are trying to see how they can best live their lives within their physical limitations. (EX. 12, pp. 23-24, 66). He believed that this sort of resolution is what Claimant needs as well. (EX. 12, p. 24, 68). Dr. Bianchini noted that an adjustment disorder typically last only six months, after which time it is no longer an adjustment disorder, and Claimant has been suffering from his depression longer than that. (EX. 12, pp. 66-67). Therefore, Claimant's depressive disorder has an adjustment aspect to it but is not actually an adjustment disorder per se. (EX. 12, p. 66).

In Dr. Bianchini's opinion, Claimant was not disabled from working from a psychological perspective. (EX. 12, p. 24). While many people in the workforce have some degree of depression, they are still able to go to work. Likewise, according to Dr. Bianchini, Claimant does not have an "overt psychological problem" which would hamper his job performance. Dr. Bianchini pointed out that Claimant does not have any organic mental impairment preventing him from concentrating or remembering, nor has he been brain-damaged by his injures. (EX. 12, p. 25). In sum, in Dr. Bianchini's view, neither Claimant's depression nor his personality disorder prevent him from working, though Dr. Bianchini noted that the personality disorder could cause Claimant problems in a work environment if he does not properly manage his behavior. (EX. 12, pp. 25-26). Dr. Bianchini affirmed that working could provide psychological benefits for Claimant. (EX. 12, pp. 26-27, 28).

Dr. Bianchini testified that he reviewed Dr. Roniger's records before his deposition. (EX. 12, pp. 68-69). He agreed with Dr. Roniger's diagnosis of pain disorder with psychological factors and general medical condition. (EX. 12, p. 69). Dr. Bianchini's recommended course of treatment for Claimant would include psychotherapy focused on adjustment and adaptation, along with vocational rehabilitation and exploration. (EX. 12,

p. 28, 69). He suggested that one hour-long session a week for about four months would be appropriate. (EX. 12, p. 29). Dr. Bianchini disagreed with Dr. MacGregor's opinion that Claimant needed three psychotherapy sessions a week for an indefinite amount of time, because he believed that amount of therapy was unnecessary. (EX. 12, pp. 30, 70, 71). In Dr. Bianchini's opinion, psychoanalysis on that scale is appropriate for someone who wants to examine his personal life in light of his childhood, as opposed to someone who is seeking help for injury-related depression. (EX. 12, pp. 70-71). In addition, Dr. Bianchini commented that Dr. MacGregor's course of treatment failed to differentiate between Claimant's pre-existing problems and the problems related to the injuries in question. (EX. 12, pp. 30-31). Dr. Bianchini acknowledged, however, that there is sometimes disagreement between doctors regarding how to treat a patient. (EX. 12, pp. 69-70).

Dr. Bianchini testified that Claimant is rather charming and straightforward. In Dr. Bianchini's opinion, Claimant has some resources for coping and improving his situation. (EX. 12, p. 32). He agreed that in order for Claimant to benefit from psychotherapy, he would have to attend the sessions. He affirmed that Dr. MacGregor's records indicated that Claimant had missed some sessions with him. (EX. 12, p. 33). He testified that Dr. MacGregor's records showed that at least some of those appointments were missed because Claimant had transportation and scheduling problems. (EX. 12, pp. 34, 39). Dr. Bianchini was unaware that Employer had recently refused to authorize Claimant's psychiatric treatment. (EX. 12, pp. 34-35). Dr. Bianchini explained that the comments in his report about Claimant's lack of participation in his psychiatric treatment related to Dr. MacGregor's records indicating that Claimant missed authorized visits. (EX. 12, pp. 36-37). Dr. Bianchini acknowledged that when Claimant missed an appointment with him, Claimant notified him that he would have to reschedule. He agreed that Claimant was cooperative during their interviews. (EX. 12, p. 39).

Dr. Bianchini testified that while Claimant has "done a lot to reform himself," Claimant still may have trouble with impulse control or controlling his anger. (EX. 12, p. 42). He suggested that Claimant's injuries, while not aggravating the personality disorder, may become a venue for these issues. (EX. 12, pp. 42-43, 47-48). Dr. Bianchini agreed that some injured workers may express anger toward their employers after a work-related accident but pointed out that most of the time, this anger does not rise to the level of threats. (EX. 12, p. 45). While Claimant never made a direct threat toward Employer, he told Dr. Bianchini, "They have never messed with a gang banger." (EX. 12, pp. 45-46). Dr. Bianchini said that he would be tempted to take such a comment seriously, but Claimant's feelings for his family probably mitigate the seriousness of the statement. (EX. 12, p. 46). Dr. Bianchini acknowledged that there is no evidence that Claimant has acted out or engaged in violence toward Employer during the pendency of his claim. (EX. 12, pp. 48-49).

Dr. Bianchini administered several psychological tests for malingering, and only one test gave an indication of malingering tendencies. (EX. 12, pp. 49-50). According to Dr. Bianchini, the malingering tests only detect between thirty-five and sixty percent of people who are actual malingerers, but they do not falsely identify people who are not really malingering. (EX. 12, pp. 50-51). The test that showed indications of malingering in Claimant's case was a forced-choice test of memory and effort administered on a computer. (EX. 12, pp. 51-52). The test results indicated that Claimant had given a poor effort on the test, consistent with patients who are malingering. Since Claimant had no brain damage, the test results could not be caused by a neurological impairment of some sort. (EX. 12, p. 54). Dr. Bianchini also did not think that difficulty in reading could account for Claimant's test results because of the way that the test is constructed. (EX. 12, pp. 54-55).

Dr. Bianchini reported that there were other indications that Claimant was exaggerating a mental disability by exaggerating cognitive impairment on the tests. While Claimant never said that he felt cognitively impaired, he did report feeling depressed, which is a form of cognitive impairment. (EX. 12, p. 56). Dr. Bianchini explained that sometimes a person who has depression may exaggerate the level of depression for purposes of secondary gain. (EX. 12, p. 57). In his opinion, there is evidence that Claimant was exaggerating his symptoms during their second interview. (EX. 12, pp. 57-58). Dr. Bianchini's report stated that on Lee-Hailey's Fake Bad Scale, Claimant's score was more like patients who are malingering physical complaints than patients who are truly injured. (EX. 12, pp. 60-62). He testified that these results raised some questions about whether Claimant could be reporting more physical problems than he actually had. (EX. 12, pp. 62-63). Dr. Bianchini affirmed, however, that he did not diagnose Claimant as a malingerer. (EX. 12, p. 49).

Psychological Evaluation Report of Scuddy F. Fontenelle, III, Ph.D

Dr. Fontenelle conducted a psychological evaluation of Claimant on January 20, 2000, at the behest of the Department of Labor. (EX. 8). During the evaluation, Claimant provided information on his personal life, education, work history and medical history. Claimant told Dr. Fontenelle that he graduated from high school in 1990. Although he had trouble with academic subjects, Claimant was an athlete and played several high school sports. He was working as a welder and fitter for Employer when he sustained an injury to his left leg in June 1998, followed by another injury to his right knee in June 1999. Claimant was currently under the treatment of Dr. Katz and Dr. Bourgeois and was taking pain medication. Dr. Fontenelle observed that Claimant was a "robust individual" who was alert and responsive. Claimant put forth an effort when undergoing psychological tests, but he became frustrated with the academic testing. Dr. Fontenelle commented that Claimant appeared to have low self-esteem in regards to his academic abilities. His speech, language and communication skills were all normal. (EX. 8, p. 2).

Claimant reported that he was suffering from headaches, depression, insomnia, low self-esteem and financial problems. He also had trouble having a good time. When Dr. Fontenelle asked Claimant to list his five main fears, Claimant listed these concerns: 1. Never being able to walk again without assistance; 2. Being homeless and unable to support his family; 3. Losing his mother; 4. Not knowing what he is doing in his life; 5. Losing his daughter for any kind of reason. (EX. 8, p. 2).

Dr. Fontenelle administered several psychological tests to Claimant during the evaluation. (EX. 8, p. 1). The Wechsler Adult Intelligence Scale-Revised (WAIS-R) showed Claimant had cognitive skill at the low average to average range. (EX. 8, p. 2). There was a large discrepancy between Claimant's performance IQ and verbal IQ on this test, indicating that he has trouble with language-mediated problem solving tasks but is better with visual motor and processing skills. He had low average abilities in vocabulary awareness, knowledge of general facts, concept reasoning skills, social comprehension, social reasoning and mathematical reasoning. In sum, Claimant's visual motor skills were much better developed than his language-mediated abilities. (EX. 8, p. 3).

The Wide Range Achievement Test–Revision III test showed that Claimant's reading work recognition and word identification skills were on the 5th grade level. His spelling and writing skills were on the 3rd grade level, and his diagnostic profile was consistent with a developmental learning disability in reading and spelling. His math skills were on the 7th grade level. The Bender Visual Motor Gestalt Test (BVMGT) had results consistent with data gathered as part of the cognitive evaluation.

As far as personality and behavior assessment, Dr. Fontenelle reported that Claimant demonstrated an adequate interpretation of reality and adequate orientation to all spheres. (EX. 8, p. 3). Claimant exhibited feelings of low self-esteem and inadequacy and had a poor self-concept. He expressed feelings of failure resulting from his inability to provide financially for his family. Working made Claimant feel good about himself, and now that he was unable to work, he felt depressed and occasionally suicidal. Dr. Fontenelle's tests revealed distinct features of depression in Claimant. Dr. Fontenelle reported that Claimant was likely to experience sullen moods, feelings of dread and unhappiness in regard to situations occurring in his daily life, probably stemming from underlying feelings of unhappiness and displeasure with life in general. Claimant might show lack of animation or lack of interest toward responsibilities and social activities. Dr. Fontenelle observed that Claimant had a pessimistic attitude and did not find fun or enjoyment in any activities. Claimant had trouble identifying positive characteristics in himself. There was no evidence of psychosis or paranoia in Claimant. (EX. 8, p. 4).

Dr. Fontenelle offered some suggestions for therapy to treat Claimant's depression, including insight-oriented therapy, cognitive-behavioral therapy and medication management

for depressive symptoms. The insight-oriented therapy would focus on understanding and awareness of Claimant's internal personality mechanisms that might contribute to his feelings of dread or unhappiness. The cognitive-behavioral therapy would focus on specific, practical strategies for managing and controlling Claimant's depression. Dr. Fontenelle also thought that medication management might be necessary. (EX. 8, p. 4).

Dr. Fontenelle administered a Self Directed Search for Vocational Planning to learn about Claimant's occupational interests and vocational preferences. Claimant was interested in clerical tasks, computer technology, assembly, packing and mechanical pursuits. Dr. Fontenelle noted that Claimant might have trouble doing physically strenuous work due to his physical limitations. Since Claimant exhibited good visual motor skills, he could probably do tasks involving assembly of objects, manipulation of objects, repairing objects or packing objects, as long as he could work at a table rather than standing up. (EX. 8, p. 4).

Dr. Fontenelle diagnosed Claimant with mild depressive disorder, significant verbal/performance discrepancy, a developmental learning disability in reading and spelling and low average intellectual ability. He recommended remedial and tutorial instruction to prepare Claimant for any job that might require basic reading or writing skills. He found that Claimant should be capable of packing, sorting and assessing quality control of objects for shipping purposes. In addition, Claimant might be able to repair and assemble motors, appliances, light fixtures, electrical supplies or mechanical objects. Dr. Fontenelle suggested that Claimant might benefit from mental health counseling with a mental health professional. Finally, Dr. Fontenelle recommended that Claimant continue to take his pain medication as prescribed and continue to treat with his orthopedist. (EX. 8, p. 5).

IV. DISCUSSION

In arriving at a decision in this matter, it is well-settled that the fact-finder is entitled to determine the credibility of the witnesses, weigh the evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular medical examiner. Todd Shipyards v. Donovan, 200 F.2d 741 (5th Cir. 1962); Atlantic Marine, Inc. and Hartford Accident & Indem. Co. v. Bruce, 666 F.2d 898, 900 (5th Cir. 1981); Banks v. Chicago Grain Trimmers Ass'n, Inc., 390 U.S. 459, 467, reh'g denied, 391 U.S. 928 (1968). It has been consistently held that the Act must be construed liberally in favor of the claimants. Voris v. Eikel, 346 U.S. 328, 333 (1953); J.B. Vozzolo, Inc. v. Britton, 377 F.2d 144 (D.C. Cir. 1967).

However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the claimant when evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d), which specifies

the proponent of a rule or position has the burden of proof. Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994), aff'g 990 F.2d 730 (3rd Cir. 1993).

I find that Claimant is a credible witness and I have weighed his testimony accordingly. Both Parties appear to agree that Claimant's depression is causally related to his physical injuries and that Claimant has not yet reached psychiatric MMI. My discussion is therefore premised upon both of these conclusions.

Medical Expenses

Section 7 of the LHWCA provides in pertinent part: "The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a). In order to assess medical expenses against an employer, the expenses must be reasonable and necessary. Pernell v. Capital Hill Masonry, 11 BRBS 582 (1979).

A claimant has established a prima facie case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255, 257-258 (1984).

Section 7 does not require that an injury be economically disabling for claimant to be entitled to medical benefits, but only that the injury be work-related and the medical treatment be appropriate for the injury. Ballesteros v. Willamette Western Corp., 20 BRBS 184, 187.

In this case, Claimant and Employer disagree over what constitutes "reasonable and necessary" medical expenses. Dr. MacGregor, Claimant's treating psychiatrist, has testified that Claimant's condition should be treated with psychotropic medication and three sessions of psychotherapy a week for an indefinite period of time. Dr. Roniger and Dr. Bianchini, on the other hand, have testified that Dr. MacGregor's recommended course of treatment is neither reasonable nor necessary. In Dr. Bianchini's opinion, one hour of therapy a week for about four months would be an appropriate course of treatment for Claimant. Dr. Roniger suggested that one session a week for about eight to twelve weeks would be appropriate. Finally, Dr. Fontenelle did not even recommend therapy at all, merely suggesting that Claimant might benefit from mental health counseling.

Employer and Employer's psychiatrist and psychologist have suggested that Claimant's depression is a mild disorder which does not require intensive psychotherapy. Employer has attempted to discredit Dr. MacGregor's medical opinion on the subject by arguing that Claimant's past behavior indicates that his real problem is a pre-existing

antisocial behavior disorder, as opposed to severe depression brought on by his work-related injuries. Employer has relied on the opinions of Dr. Roniger and Dr. Bianchini, who believe that Claimant only needs a few months of therapy in order to learn how to deal with his physical limitations.

Claimant, on the other hand, has testified that he suffers from intense feelings of depression, he worries constantly about the future and he has panic attacks. In addition, Claimant has testified that Dr. MacGregor's treatment has helped him and he would like to continue the treatment so he can learn how to deal with his situation. Claimant has been honest with all the doctors regarding his troubled past, but he has made it clear to each doctor that he has put the past behind him and moved on with his life. Claimant is now twenty-eight years old, and there is no indication that Claimant's troubled history extended beyond the age of eighteen. Indeed, Claimant is a married father of four who was providing for his family by working two jobs before he was injured. Clearly, Claimant's main concern now is his future, not his past.

Although Dr. Bianchini and Dr. Roniger disagree with Dr. MacGregor's treatment recommendations, they both agree that doctors can have different opinions over the course of treatment for a particular patient. In addition, Dr. Roniger only saw Claimant on one occasion over two years ago, and Dr. Bianchini has only seen Claimant twice. Dr. MacGregor has seen Claimant on numerous occasions since July 2000. He is also Claimant's treating psychiatrist. As such, he is better equipped to diagnose Claimant and recommend a proper course of treatment, because he has spent more time talking to Claimant and learning about the particular ways in which Claimant's depression continues to manifest itself in his life. Claimant has sustained severe physical injuries that restrict him from doing many types of work and physical activity, and he is facing the possibility of more surgeries, including amputation of his left leg. Claimant is unsure what the future holds for him and his family, but he is unable to see any positive aspects to his situation.

Based on Claimant's testimony and the testimony of Dr. MacGregor, I find that Dr. MacGregor's recommended course of treatment is a reasonable and necessary medical expense. Employer is therefore responsible for paying for Claimant's treatment with Dr. MacGregor for an indefinite period of time unless or until Claimant's psychiatric condition is resolved or such treatment is no longer reasonable and necessary.

Employer Credit for Prior Compensation

Section 14(j) of the Act provides: "If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due." 33 U.S.C. § 914(j). The purpose of Section 14(j) is to reimburse an employer for the amount of its advance payments, where these payments were

too generous, out of unpaid compensation found to be due. Stevedoring Servs. of America v. Eggert, 953 F.2d 552, 556, 25 BRBS 92, 97 (CRT) (9th Cir. 1992), cert. denied, 505 U.S. 1230 (1992); Tibbetts v. Bath Iron Words Corp., 10 BRBS 245, 249 (1979); Nichols v. Sun Shipbuilding & Dry Dock Co., 8 BRBS 710, 712 (1978) (employer's voluntary payments of temporary total disability credited against award of permanent partial compensation). Section 14(j) does not, however, establish a right of repayment or recoupment for an alleged overpayment of compensation. Ceres Gulf v. Cooper, 957 F. 2d 1199, 1208, 25 BRBS 125, 132 (CRT) (5th Cir. 1992); Eggert, 953 F. 2d at 557, 25 BRBS at 97 (CRT); Vitola v. Navy Resale & Servs. Support Office, 26 BRBS 88, 97 (1992).

Section 14(j) allows the employer a credit for its prior payments of compensation against any compensation subsequently found due. Balzer v. General Dynamics Corp., 22 BRBS 447, 451 (1989), aff'd on recon., 23 BRBS 241 (1990); Mason v. Baltimore Stevedoring Co., 22 BRBS 413, 415 (1989); Mijangos v. Avondale Shipyards, 19 BRBS 15, 21 (1986), rev'd on other grounds, 948 F.2d 941, 25 BRBS 78 (CRT) (5th Cir. 1991). If the employer pays benefits and intends them as advance payments of compensation, the employer is entitled to a credit under Section 14(j). Mijangos, 19 BRBS at 21.

In this case, the Parties apparently agree that the amount of compensation owed through December 14, 2000, totaled $65,365.68. (CX. 4, p. 2). However, for this period Employer paid compensation totaling $75,074.12. This amount includes the $10,000 advance against future compensation made November 1999. As per the Court's December 14, 2000 Order, Employer is entitled to a credit for all payments of compensation previously made to Claimant and wages earned during any period of total disability and *all advances as against any liability imposed for further payments as a result of this Order.* Employer is seeking a credit in the amount of $9,708.44, the difference between the amount it paid to Claimant and the amount that was actually owed. Claimant, on the other hand, argues that he is owed $291.56 per the Stipulation and Order.

The real issue is whether Employer is presently entitled to a credit for the $10,000 advance. Claimant maintains "since this payment was made as an advance against the PPD award, this amount should only be credited toward any future scheduled exposure." (Claimant's Brief, page 11). However, the December 14, 2000 Order of the Court, as negotiated and submitted by the Parties, provided otherwise. I find Employer's position to be correct. The plain language of the Order entitles Employer to a credit for the $10,000.00 advance as against any liability imposed for further payments as a result of the Order. I find that Employer is owed a credit for prior compensation in the amount of $9,708.44.

Conclusion

Based on the foregoing findings of fact, conclusions of law and the entire record, I hereby enter the following compensation order. All other issues not decided herein were rendered moot by the above findings.

ORDER

It is hereby ORDERED, ADJUDGED AND DECREED that:

1. Employer shall continue to be responsible for all reasonable and necessary medical expenses related to treatment of Claimant's depression and anxiety as prescribed by Dr. MacGregor pursuant to § 7 of the Act. Employer shall reimburse Claimant's attorney for previous visits to Dr. MacGregor that were paid for by Claimant's attorney.

2. Employer shall receive a credit for prior compensation in the amount of $9,708.44.

3. Within thirty days of receipt of this Order, counsel for Claimant should submit a fully-documented fee application, a copy of which shall be sent to all opposing counsel who shall have twenty days to respond.

4. All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director.

So ORDERED this 27th day of February, 2003, at Metairie, Louisiana.

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LARRY W. PRICE
Administrative Law Judge

LWP:bab